

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JAMES O'NEAL,

MARGARET A. BAGLEY,

Respondent.

ORDER GRANTING PETITIONER'S MOTION FOR AN EVIDENTIARY HEARING

This capital habeas corpus case is before the Court on Petitioner's Motion for an Evidentiary Hearing (Doc. No. 56).

Respondent opposes the Motion (Doc. No. 57), not with any procedural bar, but insisting that the evidence sought to be presented is irrelevant and immaterial. Without ruling on that question, the Court finds that an evidentiary hearing at which the evidence sought to be presented by Petitioner is heard, will not violate 28 U.S.C. § 2254(e)(2) and thus is within the Court's discretion. *Schriro v. Landigan*, ___ U.S. ___, 127 S. Ct. 1933, 1939, 167 L. Ed. 2d 836 (2007). The issues involved are narrow and the evidence sought to be introduced is discrete.

Accordingly, the Motion is granted. Counsel shall consult with the Court's Judicial Assistant, DeAnna L. Perry (937-512-1550) to set a date for the hearing.

February 21, 2008.

s/ **Michael R. Merz**
Chief United States Magistrate Judge